

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DENISE MEDINA,

Plaintiff,

vs.

PROGRESSIVE NORTHERN
INSURANCE COMPANY; MOISES
MEDINA, DOES I - V; and ROE
CORPORATIONS I - V, inclusive,

Defendants.

Case No. 2:15-cv-00835-KJD-PAL

ORDER

Before the Court is Plaintiff Denise Medina's Motion to Remand (#10). Defendant Progressive Northern Insurance Company (Progressive) filed a response (#16) to which Plaintiff replied (#19). Also before the Court is Plaintiff's Motion to Amend (#9). Progressive filed a response (#15) to which Plaintiff replied (#20). Also before the Court is Progressive's Motion to Dismiss (#4). Plaintiff filed a response (#8) to which Progressive replied (#20). Also before the Court is Progressive's Countermotion to Dismiss Defendant Moises Medina (#17). Plaintiff filed a response (#22) to which Progressive replied (#26). Finally before the Court is Cross-defendant Progressive's Motion to Dismiss Cross-claim of Moises Medina (#23). Moises filed a response in opposition (#31) to which Progressive replied (#32).

1 I. Background

2 Plaintiff was a passenger in a vehicle driven by Moises Medina (Moises) when it was
3 involved in a single-vehicle rollover accident on or about September 24, 2010 in San Bernardino
4 County, California. Arturo Alcalde and Michael Medina were also passengers in the vehicle. As an
5 immediate result of the rollover, Plaintiff and Alcalde suffered serious and permanent injuries.
6 Alcalde subsequently assigned any rights stemming from the accident to Plaintiff. At the time of the
7 accident, Progressive insured Moises under policy number 70582990-2. Plaintiff is listed as a driver
8 and household resident under Moises's policy. On November 7, 2014 the Clark County District
9 Court issued a judgment ordering Moises to pay \$125,000.00 to Plaintiff, and \$175,000.00 to
10 Alcalde.

11 II. Analysis

12 A. Motion to Remand

13 A defendant or defendants may remove a suit from a state court to federal court only if it
14 could have been filed there originally. See 28 U.S.C. § 1441(a) (2006); see also Caterpillar, Inc. v.
15 Williams, 482 U.S. 386, 392 (1987). Federal district courts have original jurisdiction over cases
16 where the amount in controversy exceeds \$75,000, and where complete diversity exists between the
17 parties. See 28 U.S.C. § 1332(a). A corporation is deemed to be citizens of both the state that it is
18 incorporated and the state where it has its principal place of business. See 28 U.S.C. § 1332(c).

19 Nonetheless, if a defendant has been “fraudulently joined,” that fraudulently joined
20 defendant's citizenship is ignored when determining diversity and removability. See Morris v.
21 Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001); see also Ritchey v. Upjohn Drug Co.,
22 139 F.3d 1313, 1318 (9th Cir. 1998) (“[I]t is a commonplace that fraudulently joined defendants will
23 not defeat removal on diversity grounds.”). A party is fraudulently joined “[i]f a plaintiff fails to state
24 a cause of action against a resident defendant, and the failure is obvious according to the well-settled
25 rules of the state.” Morris, 236 F.3d at 1067 (citations omitted); Knutson v. Allis-Chalmers Corp.,
26 358 F. Supp. 2d 983, 993 (D. Nev. 2005).

1 Plaintiff's proposed amendment seeks to add an allegedly inadvertently left out paragraph
 2 that asserted a claim against Moises for a renewed judgement. However, even if this amendment
 3 were successful, a renewed judgment is not a recognized cause of action in Nevada, nor is this the
 4 appropriate court from which to seek a renewed judgment.¹ As there is no viable cause of action
 5 brought against Moises, nor allegations of wrongdoing, he is fraudulently joined and the Court is
 6 required to ignore Moises's citizenship when determining removability.

7 Further, Plaintiff is pursuing Progressive for the full amount of the judgment entered against
 8 Moises in the underlying state court case. That judgment totals \$300,000: \$175,000 in favor of
 9 Alcalde, assigned to Plaintiff, and \$125,000 in favor of Plaintiff. Without question, the amount in
 10 controversy well exceeds \$75,000. Therefore, removal was appropriate. Accordingly, Plaintiff's
 11 motion to remand (#10) is denied.

12 B. Motion to Amend

13 Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, the Court "should freely give
 14 leave [to amend] when justice so requires." However, "[i]n determining whether leave to amend is
 15 appropriate, the district court considers the presence of any of four factors: bad faith, undue delay,
 16 prejudice to the opposing party, and/or futility." Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d
 17 708, 712 (9th Cir. 2001) (internal quotation and citation omitted).

18 Plaintiff's motion to amend is futile. Plaintiff's proposed amendment seeks to add a claim for
 19 a renewed judgment against Moises. However, a renewed judgment is not a recognized cause of
 20 action in the state of Nevada, nor is this the appropriate court from which to seek a renewed
 21 judgment. There is no additional claim of wrong doing listed in the proposed amended paragraph
 22 omitted from the original complaint. Therefore, even if the Court were to allow the amendment, it
 23

24
 25 ¹ Further, Plaintiff's argument that there is no minimum time for seeking a renewed judgment is frivolous, and in
 26 fact supports the opposing argument that Plaintiff has no real claim against Moises. Plaintiff is seeking a renewal she
 could wait several years to file simply to invent a reason to keep Moises in this lawsuit for her own jurisdictional benefit.

1 would not make Moises a viable defendant and is futile.² Accordingly, Plaintiff's motion to amend is
2 denied.

3 C. Motion to Dismiss

4 In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken as
5 true and construed in a light most favorable to the non-moving party." Wyler Summit P'ship v.
6 Turner Broad. Sys., Inc., 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). "[A] complaint must
7 contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its
8 face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544,
9 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff has pleaded
10 facts which allow "the court to draw the reasonable inference that the defendant is liable for the
11 misconduct alleged." Id.

12 1. Motion to Dismiss the Case

13 Progressive asserts Plaintiff is a third-party claimant improperly asserting claims
14 directly, and therefore lacks standing. Progressive correctly asserts that Nevada is not a direct action
15 state. See Hall v. Enterprise Leasing Co., 122 Nev. 686, 693 (2006). However, Nevada "allows
16 actions by third-party tort claimants against third-party liability coverage providers . . . after a
17 judgment against the tortfeasor has been obtained." Id. Plaintiff obtained a judgment from the
18 Nevada District Court on November 7, 2014 against Moises in the amount of \$300,000.00. See
19 Plaintiff's Response to Progressive's Motion to Dismiss, Ex. 1. That judgment entitles Plaintiff to
20 pursue enforcement directly against the third-party liability coverage provider, Progressive.
21 Accordingly, Progressive's motion to dismiss is denied.

22
23
24 ² Further, even had there been an actual cause of action articulated in the proposed amendment, any cause of
25 action arising out of the same circumstance could invoke the doctrine of res judicata, as Plaintiff already has a judgment
26 against Moises on the exact issues in question. See Allen v. McCurry, 449 U.S. 90, 94 (U.S. 1980) ("Under res judicata, a
final judgment on the merits of an action precludes . . . relitigating issues that were or could have been raised in that
action.").

1 2. Countermotion to Dismiss Moises Medina

2 Plaintiff alleges no claims against Moises upon which relief can be granted. Plaintiff
3 asserts her request for a renewed judgment is a viable claim. However, Plaintiff has failed to point to,
4 nor has the Court found, any legal authority describing renewal of judgment as a recognized cause of
5 action in Nevada.³ Plaintiff makes no other allegations of wrongdoing or misconduct against Moises.
6 Accordingly, Progressive's countermotion to dismiss Moises Medina is granted.

7 3. Motion to Dismiss Cross-claim of Moises Medina

8 In response to the motion to dismiss the cross-claim, Moises concedes that if the
9 Court finds that he is a fraudulently or improperly joined party that the Court would have discretion
10 to dismiss Moises from this action. The Court, having found that Moises was improperly joined to
11 defeat diversity jurisdiction, grants Progressive's motion to dismiss Moises' cross-claims, good cause
12 being found and in accordance with Local Rule 7-2(d).

13 III. Conclusion

14 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Remand (#10) is
15 **DENIED.**

16 IT IS FURTHER ORDERED that Plaintiff's Motion to Amend (#9) is **DENIED.**

17 IT IS FURTHER ORDERED that Progressive's Motion to Dismiss (#4) is **DENIED** without
18 prejudice.

19 IT IS FURTHER ORDERED that Progressive's Countermotion to Dismiss Moises Medina
20 (#17) is **GRANTED;**

21 ///

22 ///

23 ///

24
25 ³Plaintiff correctly asserts that simply because NRS § 17.214 provides one method of renewal does not rule out
26 that there may be other methods of renewal available. However, none of those alternative methods of renewal are
recognized causes of action in the state of Nevada.

1 IT IS FURTHER ORDERED that Cross-defendant Progressive's Motion to Dismiss
2 Crossclaim of Moises Medina (#23) is **GRANTED**.

3 DATED this 26th day of October 2015.
4

5 
6

7 Kent J. Dawson
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26